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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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9 SHANNON RILEY,

No. C-13-2524 TEH (PR)

10 Petitioner,

ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS

11 v.

12 RANDY GROUNDS, Warden,

(Doc. #8)

13 Respondent.  
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16 Petitioner Shannon Riley, a state prisoner incarcerated at  
17 Salinas Valley State Prison (SVSP) in Soledad, California, has filed  
18 a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254  
19 alleging that a document in his prison file falsely identifies him  
20 as a sex offender and that this could be used as a negative factor  
21 in determining unsuitability when he is being considered for parole.  
22 Respondent has filed a motion to dismiss. Petitioner has filed an  
23 opposition and Respondent has filed a reply. For the reasons stated  
24 below, the Court grants the motion to dismiss.

25 I

26 Respondent argues that the petition must be dismissed  
27 because it is unexhausted, it is procedurally defaulted and it fails  
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1 to state a cognizable federal habeas claim for relief.<sup>1</sup>

2 A

3 Prisoners in state custody who wish to challenge in  
4 federal habeas proceedings either the fact or length of their  
5 confinement are first required to exhaust state judicial remedies by  
6 presenting the highest state court available with a fair opportunity  
7 to rule on the merits of each and every claim they seek to raise in  
8 federal court. See 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455  
9 U.S. 509, 515-16 (1982). If available state remedies have not been  
10 exhausted as to all claims, the district court must dismiss the  
11 petition. Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th  
12 Cir. 1988). A dismissal solely for failure to exhaust is not a bar  
13 to returning to federal court after exhausting available state  
14 remedies. Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.  
15 1995).

16 The exhaustion-of-state-remedies doctrine reflects a  
17 policy of federal-state comity to give the state "the initial  
18 'opportunity to pass upon and correct alleged violations of its  
19 prisoners' federal rights.'" Picard v. Connor, 404 U.S. 270, 275  
20 (1971) (citations omitted). The exhaustion requirement is satisfied  
21 only if the federal claim (1) has been "fairly presented" to the  
22 state courts, id.; Castillo v. McFadden, 399 F.3d 993, 998 (9th Cir.  
23 2004); or (2) no state remedy remains available, see Johnson v.  
24 Zenon, 88 F.3d 828, 829 (9th Cir. 1996). However, a claim is not

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26 <sup>1</sup>Respondent first argues procedural default and then exhaustion. Because the  
27 procedural default claim is based on Petitioner's failure to exhaust, the Court  
28 addresses lack of exhaustion first.

1 fairly presented to the state's highest court if it is raised in a  
2 procedural context which makes it unlikely that it will be  
3 considered on the merits. Castille v. Peoples, 489 U.S. 346, 351  
4 (1989); Casey v. Moore, 386 F.3d 896, 917 (9th Cir. 2004); Kibler v.  
5 Walters, 220 F. 3d 1151, 1153 (9th Cir. 2000).

6 Even though non-exhaustion is an affirmative defense, the  
7 petitioner bears the burden of proof that state judicial remedies  
8 were properly exhausted. Parker v. Kelchner, 429 F.3d 58, 62 (3d  
9 Cir. 2005); see Darr v. Burford, 339 U.S. 200, 218-19 (1950)  
10 ("petitioner has the burden . . . of showing that other available  
11 remedies have been exhausted"), overruled on other grounds, Fay v.  
12 Noia, 372 U.S. 391 (1963).

13 When the petitioner challenges a prison grievance, the  
14 prison's internal administrative remedies must be exhausted before  
15 the petitioner may seek judicial relief. In re Dexter, 25 Cal. 3d  
16 921, 925 (1979).

17 B

18 On May 14, 2012, the Monterey County Superior Court denied  
19 Petitioner's habeas petition on the ground that Petitioner had not  
20 "exhausted administrative remedies through the Director's Level of  
21 Appeal, which he must do before seeking judicial review of his  
22 claims." Pl.'s Opp, Ex. D, In re Shannon Riley, On Habeas Corpus,  
23 No. HC 7675, at 1, Monterey County Sup. Ct. May 14, 2012. The  
24 Superior Court summarized the facts of Petitioner's claim as  
25 follows:

26 According to Petitioner, when he received a copy of his record  
27 from his recent program review with the Unit Classification  
28 Committee (UCC), he noticed an entry which reflected that he

1 had a prior arrest history as a sex offender disrupting a  
2 school. . . . He alleges that this entry is false. . . . He  
3 alleges that he talked to his counselor who told him to file an  
administrative appeal. He states that he attempted to file an  
appeal but it was cancelled as being untimely.

4 In re Shannon Riley, No. HC 7675 at 1.

5 In denying the petition, the Superior Court explained that  
6 requiring exhaustion of administrative remedies "promotes judicial  
7 efficiency as it allows prison officials to investigate facts and  
8 correct any problems before there is need for a court to get  
9 involved." Id. The court noted that Petitioner's appeal was  
10 canceled as untimely and "he failed to appeal the cancellation,  
11 which if processed, would have allowed him to exhaust his  
12 administrative remedies." Id. at 1-2. The court also ruled that  
13 Petitioner failed to state sufficient facts to waive the exhaustion  
14 requirement. Id. at 2.

15 The Superior Court also addressed the merits of  
16 Petitioner's claim, noting that Petitioner merely contended that the  
17 allegation that he was a sex offender was false, but presented no  
18 documentary evidence to support his position. Id.

19 Petitioner filed a petition with the California Court of  
20 Appeal, which was summarily denied. Opp'n., Ex. H. Petitioner then  
21 filed a petition in the California Supreme Court which was summarily  
22 denied with a citation to In re Dexter, 25 Cal. 3d 921, 925-26  
23 (1979). Opp'n., Ex. J. A citation to Dexter stands for the  
24 proposition that a state habeas petitioner "will not be afforded  
25 judicial relief unless he has exhausted state administrative  
26 remedies." Id. at 925.

27 Based on the above authority, the petition was not fairly  
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1 presented to the California Supreme Court because Petitioner  
2 submitted an unexhausted petition and, thus, that court was not able  
3 to rule on its merits. Therefore, the petition is unexhausted. See  
4 Castille, 489 U.S. at 351 (if procedural context of petition does  
5 not allow highest state court to rule on merits, petition is  
6 unexhausted).

7 In his opposition, Petitioner concedes that the petition  
8 is unexhausted, Opp'n at 7 at ¶ 33, but claims that exhaustion  
9 should be excused as an "inadvertent error" because "he was unaware  
10 of the fact that he could appeal a cancellation of an administrative  
11 appeal" and it was an extremely stressful time for him due to racial  
12 tension in the prison. Opp'n at 5.

13 A federal habeas court may consider an unexhausted claim  
14 under 28 U.S.C. § 2254(b)(1)(B)(i)-(ii) if:

15 there is an absence of available State corrective process; or  
16 circumstances exist that render such process ineffective to  
protect the rights of the applicant.

17 28 U.S.C. § 2254(b)(1)(B)(i)-(ii).

18 Petitioner's own documents show that he was informed not  
19 only that he could appeal a cancellation decision but that this was  
20 the only path for eventually resubmitting the original appeal. See  
21 Pet'n., Ex. A. Specifically, at the bottom of each of the four  
22 forms accompanying the return of his appeal, the following notice  
23 appears:

24 Be advised that you cannot appeal a rejected appeal, but should  
25 take the corrective action necessary and resubmit the appeal  
within the timeframes specified . . . Pursuant to CCR  
26 3084.6(e), once an appeal has been cancelled, that appeal may  
not be resubmitted. However, a separate appeal can be filed on  
27 the cancellation decision. The original appeal may only be  
resubmitted if the appeal on the cancellation is granted.

1 Ex. A.

2 Furthermore, it appears that Petitioner knew that he could  
3 appeal the cancellation, but chose not to do so because he thought  
4 the appeal would be futile. See Pet'n. Mem. of P. and A at 4, ¶ 5  
5 (explaining that appeal would be futile because appeal coordinator  
6 "has a history of arbitrarily refusing to process Petitioner's  
7 appeals"). These reasons are insufficient to show that the state's  
8 appeal process was ineffective.

9 Petitioner also argues that the California Supreme Court  
10 prevented him from exhausting state court remedies because it denied  
11 his motion for a stay. This claim is based on the following facts.

12 After the California Court of Appeal denied his habeas  
13 petition, Petitioner filed an untimely petition for review and a  
14 stay motion in the California Supreme Court. Opp. Ex. H at 2-3. In  
15 a letter dated November 2, 2012, the Court informed Petitioner that  
16 it lacked jurisdiction over his petition for review because he had  
17 filed it after the one-month deadline. However, in a letter dated  
18 November 21, 2012, the Court informed Petitioner that, although it  
19 lost jurisdiction to act on a petition for review of the Court of  
20 Appeal's decision, he could file a petition for a writ of habeas  
21 corpus, and enclosed the correct form. Petitioner then filed a  
22 petition in the California Supreme Court, which was summarily denied  
23 on February 27, 2013 with a citation to In re Dexter.

24 Thus, the California Supreme Court read and considered  
25 Petitioner's petition for habeas relief. The fact that it did not  
26 grant his motion for a stay regarding his petition for review of the  
27 Court of Appeal's order did not prevent Petitioner from presenting  
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his petition to the state's highest court.

Petitioner fails to demonstrate that there was an absence of an available state corrective process or that circumstances rendered this process ineffective to protect his rights. The petition is unexhausted and is dismissed on this ground.

## II

**A**

As noted above, the California Supreme Court denied Petitioner's petition with a citation to In re Dexter, 25 Cal. 3d 921 (1979). Dexter stands for the proposition that a state habeas petitioner "will not be afforded judicial relief unless he has exhausted state administrative remedies." Id. at 925. Respondent contends that the procedural default invoked by the California Supreme Court bars this petition.

In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. Coleman v. Thompson, 501 U.S. 722, 750 (1991). That is, Petitioner's claim is procedurally defaulted only if the Supreme Court of California's bar was an independent and adequate state procedural ground and Petitioner cannot show that an exception to the procedural bar applies.

Petitioner does not contend that the bar was not independent, and indeed it is clear that it was - the only reason

1 given for rejecting the state petition was failure to exhaust  
2 administrative remedies. The ruling was in no way on the merits, or  
3 intertwined with a decision on the merits. As to adequacy, the  
4 state has pleaded the existence of the bar, thereby shifting the  
5 burden to Petitioner to come forward with specific factual  
6 allegations and citations to authority to demonstrate that the rule  
7 is not consistently enforced. See Bennett v. Mueller, 322 F.3d 573,  
8 585-86 (9th Cir. 2003). This he has not done. Instead, Petitioner  
9 argues that he has shown cause and prejudice.

10 B

11 The cause standard requires the petitioner to show that  
12 "some objective factor external to the defense" prevented  
13 presentation to the state court. McCleskey v. Zant, 499 U.S. 467,  
14 493 (1991) (citing Murray v. Carrier, 477 U.S. 478, 488 (1986)). In  
15 other words, to show cause, a petitioner must show that something  
16 external to himself, something that cannot be attributed to him,  
17 impeded his efforts to comply with the state's procedural rule.  
18 Maples v. Thomas, 132 S. Ct. 912, 922 (2012).

19 To show cause, Petitioner repeats the arguments he made  
20 above in regard to the issue of exhaustion. That is, he states that  
21 (1) he was unaware of the fact that he could appeal the cancellation  
22 of his administrative appeal, Opp. at 5, ¶ 17, and (2) he was under  
23 a great deal of stress due to the high level of racial tension at  
24 his prison, id. at ¶ 18. As discussed above, Petitioner was  
25 notified that he could appeal the cancellation of his appeal.  
26 Furthermore, Petitioner's allegations of racial tension and his  
27 emotional distress, without more, are not sufficient to constitute  
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an external factor that prevented him from exhausting administrative remedies.

Petitioner also argues that a fundamental miscarriage of justice would occur if his claim is not adjudicated because he "has provided the exact document that was used to falsely label him a "'sex offender.'" However, to show a fundamental miscarriage of justice, a petitioner must show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. 478, 496 (1986). Because Petitioner does not challenge his underlying conviction in this petition, he cannot meet this exception to the procedural bar rule.

Respondent has established that Petitioner's claim was procedurally defaulted. Therefore, the motion to dismiss is granted on the ground of procedural default as well as on the failure to exhaust administrative remedies. Dismissal is with prejudice. Because the motion to dismiss is granted on Respondent's first two grounds for relief, the Court need not address Respondent's third ground for dismissal.<sup>2</sup>

### III

Petitioner has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right [or] that jurists of reason would

<sup>2</sup>Petitioner is advised to review pages 11-12 of Respondent's motion which describes California Penal Code section 626.8, which Respondent indicates is the section in Petitioner's record that he challenges in this petition. Respondent clarifies that this section does not describe a sex offense, but provides that disruption of a school is a misdemeanor, resulting in mandatory jail time if the offender has been convicted of an enumerated sex crime and that it does not indicate that Petitioner is a sex offender.

1 find it debatable whether the district court was correct in its  
2 procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).  
3 Accordingly, a certificate of appealability is DENIED.

4 CONCLUSION

5 Based on the foregoing, the Court orders as follows:

- 6 1. Respondent's motion to dismiss is GRANTED. Dismissal  
7 is with prejudice.  
8 2. A certificate of appealability is denied  
9 3. This order terminates docket number 8.  
10 4. The Clerk of the Court shall enter a separate judgment  
11 and close the file.

12 IT IS SO ORDERED.

13 DATED 03/10/2014



14 THELTON E. HENDERSON  
15 United States District Judge  
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